

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

WALTER W. THIEMANN, :  
On Behalf of Himself :  
And of All Others :  
Similarly Situated, :

Plaintiff, :

VS. :

CASE NO. C-1-00-793

OHSL FINANCIAL :  
CORPORATION, et al., :

Defendants. :

Deposition of ~~Ed~~ MARK REUTER, ESQ., a  
witness herein, called by the plaintiff for  
cross-examination pursuant to the Federal Rules  
of Civil Procedure, taken before me, Lee Ann  
Williams, a Registered Professional Reporter  
and Notary Public in and for the State of Ohio,  
at the offices of Gene Mesh & Associates, 2605  
Burnet Avenue, Cincinnati, Ohio 45219, on  
Wednesday, August 20, 2003, at 9:35 a.m.

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## 1 APPEARANCES:

2 On behalf of the Plaintiff

3 Gene L. Mosh, Esq.

4 and

5 Michael G. Brautigam, Esq.

6 Gene Mosh &amp; Associates

7 2805 Burnet Avenue

8 Cincinnati, Ohio 45219

9 On behalf of the Defendant:

10 Rachel A. Rowe, Esq.

11 Keating, Muehling &amp; Klekamp

12 1400 Provident Tower

13 One East Fourth Street

14 Cincinnati, Ohio 45202

15 On behalf of the Defendant:

16 Dennis Buckley, Esq.

17 and

18 Dennis Deters, Esq.

19 Schroeder, Maendrell, Barbiers

20 &amp; Powers

21 110 Governor's Knoll

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23 Cincinnati, Ohio 45249

24 On behalf of the Witness:

25 Patrick F. Fischer, Esq.

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1 F. MARK REUTER, ESQ.

2 having been first duly sworn, testified as

3 follows:

4 CROSS-EXAMINATION

5 BY MR. BRAUTIGAM:

6 Q. Good morning, Mr. Reuter. My name  
7 is Michael G. Brautigam. I represent Walter  
8 Thiernann and a class of OHSL shareholders in  
9 this litigation. To my left is Gene Mosh.10 Mr. Reuter, let me hand you what  
11 has previously been marked as Plaintiff's  
12 Deposition Exhibit 1. And I would ask you to  
13 take a look at that. With this document or any  
14 other, please take as much time as you need to  
15 review it. In most cases I think I can direct  
16 your attention to the appropriate sections.  
17 Have you seen this document before?

18 A. No, not until now.

19 Q. Okay. Let me direct your  
20 attention to the extreme right column. There's  
21 a paragraph there and a sentence within the  
22 paragraph, Burke's response, Hanauer opposed  
23 the Provident takeover because he wanted Oak  
24 Hills to remain independent. Do you see that?

25 A. Yes.

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1 Q. Is that a true statement?

2 MS. ROWE: Objection.

3 MR. FISCHER: Objection. No  
4 foundation.

5 A. I don't know.

6 Q. Who would know?

7 MR. FISCHER: Objection.

8 A. I don't know.

9 Q. Did you ever learn from any source  
10 that Mr. Ken Hanauer, the CEO and a Board  
11 member of OHSL, was opposed to a merger with  
12 Provident?13 MR. FISCHER: Objection. To the  
14 extent it calls for revealing communications  
15 between you and me, don't do that. Other than  
16 that, answer the question.

17 A. I can't say.

18 Q. You can't say because you don't  
19 remember?

20 MR. FISCHER: Objection.

21 Q. During the time you were working  
22 on the merger, did you ever learn from any  
23 source that Ken Hanauer opposed the merger with  
24 Provident?

25 A. No.

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Page 8

1 Q. During the time you were working  
2 on the merger, did you ever learn that Mr.  
3 Herron, a Board member of OHSL and the chairman  
4 of the audit committee, had resigned in part in  
5 protest of the merger with Provident?

6 A. Not that I recall.

7 Q. If you had known of that, do you  
8 think that's something that you would want to  
9 have shared with the OHSL shareholders?

10 MR. FISCHER: Objection to the  
11 form.

12 MS. ROWE: Objection.

13 MR. FISCHER: Hypothetical. Basis  
14 also

15 A. That would be a decision for OHSL  
16 and its counsel to have made.

17 Q. And Provident would have no role  
18 in that; is that correct?

19 A. I said that would be a decision  
20 for OHSL and its counsel. That is not a  
21 decision primarily for Provident, no.

22 Q. Okay. Is it a decision for  
23 Provident to some extent?

24 A. No. It's primarily a decision for  
25 OHSL and its counsel.

1 these materials was a collective effort, the  
2 responsibility for which was shared by a number  
3 of parties.

4 Q. Okay. Which --

5 A. Primarily OHSL, its counsel,  
6 Provident, KMK.

7 Q. Okay. And how would you divide up  
8 the responsibilities? Would you say that the  
9 proxy materials and registration statement  
10 before you as Defendant's Exhibit I were 50  
11 percent the responsibility of OHSL and the  
12 Dinsmore firm and 50 percent the responsibility  
13 of Provident and the KMK firm? How would you  
14 divide it up?

15 MR. FISCHER: Objection.

16 MS. ROWE: Objection.

17 MR. FISCHER: Three questions. It  
18 makes no sense. Go ahead if you can answer.

19 A. I don't understand the question.

20 Q. Okay. Approximately what  
21 percentage of the work involved did KMK have in  
22 the production and dissemination of this proxy  
23 material and registration statement?

24 MR. FISCHER: Objection.

25 MS. ROWE: Object to form.

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1 Q. Okay. Let's take a look at  
2 Defendant's Exhibit I. Have you seen that  
3 document before?

4 A. Is this the proxy statement/  
5 prospectus that was -- was this document mailed  
6 to OHSL shareholders?

7 Q. Yes

8 A. Yes, I have.

9 Q. Have you read every word and  
10 looked at every number in that document?

11 A. No.

12 Q. Did someone from KMK read every  
13 word and look at every number in that document?

14 A. I don't know.

15 Q. You don't know if anyone was  
16 assigned that task?

17 A. I don't understand. Your question  
18 asks if any one person; is that right?

19 Q. Right. Was any one person at KMK  
20 assigned to read the entire proxy materials and  
21 registration statement?

22 MS. ROWE: Objection.

23 MR. FISCHER: Objection. If you  
24 know.

25 A. The preparation and review of

1 A. There's no way I can tell you what  
2 percentage.

3 Q. Okay. Was it a substantial  
4 amount?

5 MR. FISCHER: Objection.

6 A. I don't understand what you mean  
7 by "substantial amount."

8 Q. Did you personally put a lot of  
9 work in on this document?

10 A. What do you mean by "a lot of  
11 work"?

12 Q. How many hours did you bill with  
13 respect to the OHSL-Provident merger?

14 A. I don't know.

15 Q. Approximately how many?

16 MR. FISCHER: If you can answer

17 A. I don't know.

18 Q. Order of magnitude, a hundred, a  
19 thousand, 10,000?

20 MR. FISCHER: Objection to form.

21 A. It was less than a thousand.

22 It --

23 MR. FISCHER: If you --

24 A. I don't know.

25 MR. FISCHER: You have to be

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1 able --

2 A. I don't know the --

3 MR. FISCHER: -- to give a  
4 reasonable approximation. If you're guessing,  
5 you don't have to answer the question.

6 A. I would be guessing. I would say  
7 it was less than a thousand, but I'd be  
8 guessing beyond that.

9 Q. Is it between 500 and a thousand?

10 MS. ROWE: Objection.

11 MR. FISCHER: Objection. He  
12 already said he didn't know. Badgering the  
13 witness. If you can answer.

14 A. I doubt it was more than 500,  
15 although I -- I doubt it was more than 500.

16 Q. Okay. What did you do with  
17 respect to the OHSL-Provident merger?

18 A. I assisted in the representation  
19 of Provident in connection with the filing of  
20 the S-4.

21 Q. Okay. And who was your client?

22 A. Provident Financial Group.

23 Q. Okay. Did you represent the  
24 directors at all?

25 A. No. I represented the company.

Page 11

1 Q. What can you tell me about the  
2 litigation that brings us here today?

3 MR. FISCHER: Objection. Don't  
4 discuss anything we've discussed.

5 Q. What do you know about the  
6 litigation, Thiemann versus OHSL, et al.?

7 A. I know what I've read in this  
8 article that you've just set in front of me.

9 MR. FISCHER: Other than what I've  
10 told you. Don't discuss anything that we've  
11 talked about.

12 A. That's what I know.

13 Q. Okay. Have you ever read any  
14 pleadings in the OHSL case?

15 A. No.

16 Q. Have you ever read any press  
17 articles other than this one that relate to the  
18 OHSL-Provident merger?

19 MR. FISCHER: Other than the one  
20 that you gave him today?

21 MR. BRAUTIGAM: Yes, that's what I  
22 said.

23 MR. FISCHER: Well, you said  
24 "this." I just wanted to make sure we're  
25 talking about the same one.

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1 A. Is your question related to the  
2 litigation?

3 Q. Yes.

4 A. No, I have not.

5 Q. Are you represented by counsel  
6 today?

7 MR. FISCHER: You can answer that.

8 A. Yes, I am.

9 Q. Okay. Who is your counsel?

10 A. Pat Fischer.

11 Q. Okay. How did Mr. Fischer come to  
12 represent you?

13 A. He approached me and -- he  
14 approached me.

15 Q. And did what? And how did that  
16 work?

17 MR. FISCHER: Objection. Don't  
18 discuss any discussions between us.

19 A. I can't answer that question.

20 Q. Are you paying for Mr. Fischer's  
21 representation?

22 MR. FISCHER: You can answer the  
23 question. In some ways he is, but go ahead.

24 A. I have no intention of receiving  
25 an invoice from Mr. Fischer or writing him a

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1 check to compensate him for his services.

2 Q. Okay. Is Mr. Fischer representing  
3 anyone else?

4 A. In connection with what?

5 MS. ROWE: Object to the form.

6 MR. FISCHER: Objection.

7 Q. To the litigation.

8 MR. FISCHER: I represent a lot of  
9 people. Do you know?

10 A. In connection with this  
11 litigation, is that your question?

12 Q. Yes.

13 MR. FISCHER: Do you know other  
14 than from our discussions? Don't reveal to him  
15 our --

16 A. I don't know other than from our  
17 discussions.

18 Q. Okay. Who does Ms. Rowe represent  
19 in this litigation?

20 MR. FISCHER: Do you know?

21 A. I can't say.

22 Q. Do you know if KMK has ever been  
23 sued in any litigation arising out of the  
24 OHSL-Provident merger?

25 MR. FISCHER: Now, to the extent

4 (Pages 10 to 13)

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1 you know from other sources you can answer.  
2 But if you know only from me, then don't answer  
3 the question.

4 A. I learned about this --

5 MR. FISCHER: Don't answer the  
6 question.

7 A. I can't say.

8 Q. Have you ever talked to Mr. Burke  
9 about the OHSL-Provident litigation?

10 A. No, I have not.

11 Q. Were you in a meeting with Mr.  
12 Fischer, Mr. Burke, Ms. Rowe, Mr. Weiss, Mr.  
13 Matthews and Mr. Winstead?

14 A. Yes.

15 Q. Was the --

16 MR. FISCHER: Same as our previous  
17 objection, but I'm going to let him answer to  
18 the extent -- to just get over this, but we're  
19 not waiving any other rights.

20 A. Yes, I was in that meeting.

21 Q. What was the purpose of that  
22 meeting?

23 A. To inform us that we were being  
24 deposed in connection with this litigation and  
25 to discuss mechanics and scheduling of the

1 A. I can't answer that.

2 MR. FISCHER: But you're asking  
3 for the content of the conversation as the  
4 question is asked. Objection. Don't answer  
5 that question.

6 Q. Did you learn about the  
7 OHSL-Provident litigation in 2003?

8 MR. FISCHER: Objection. Don't  
9 answer that question. You can ask him when  
10 he's talked with me, but you can't ask him  
11 about the content of the conversation.

12 Q. Mr. Reuter, let me direct your  
13 attention to Defendant's Exhibit 1. Do you see  
14 that in front of you?

15 A. Yes, I do.

16 Q. Okay. Who was ultimately  
17 responsible for finalizing Defendant's Exhibit  
18 1?

19 MR. FISCHER: Objection.

20 A. This document represents a  
21 collaborative effort of a number of parties.  
22 Parties primarily responsible for this document  
23 are OHSL and Provident. Your question, I'm --  
24 is your question with respect to the entire  
25 document?

Page 15

Page 17

1 depositions.

2 Q. And that was in July of 2003; is  
3 that correct?

4 A. I don't recall the exact date, but  
5 I'd -- I'm pretty sure it was July, yes.

6 Q. And is that the first time you  
7 learned of any litigation with respect to the  
8 OHSL-Provident merger?

9 MR. FISCHER: Don't discuss  
10 anything we've discussed. If you can't answer  
11 the question, tell him that. ~~---~~

12 A. Can you repeat the question?

13 Q. Yes. Was that meeting in July of  
14 2003 the first time you learned of any  
15 litigation arising out of the OHSL-Provident  
16 merger?

17 A. No, not the first time.

18 Q. Okay. When did you learn about  
19 litigation arising out of the OHSL-Provident  
20 merger?

21 MR. FISCHER: Objection. If it  
22 calls for you to tell him about our discussions  
23 in any way, don't answer that question.

24 A. I can't answer that.

25 Q. It just calls for when?

1 Q. Yes.

2 A. All -- however many pages here?

3 MR. FISCHER: Go through each page  
4 then if he wants, Mr. Reuter.

5 Q. Yes.

6 A. This page right here? Are you  
7 asking about this page right here?

8 Q. My first question is, who is  
9 responsible for the overall document, the  
10 entire document?

11 A. I answered. I said it was a  
12 collaborative effort.

13 Q. Isn't there someone who is  
14 responsible for saying that this document is in  
15 final form and can go out to the shareholders?

16 MR. FISCHER: Objection.

17 MS. ROWE: Objection. Asked and  
18 answered.

19 MR. FISCHER: We've gone through  
20 it. We're repeating ourselves, Mr. Brautigam.

21 A. I repeat my prior answer.

22 Q. Can you find his prior answer and  
23 have it read back, please?

24 (Record read by Reporter.)

25 Q. Okay. Which individuals at OHSL

5 (Pages 14 to 17)

Page 18

1 were primarily responsible for the document?

2 A. I --

3 MR. FISCHER: Objection. I don't  
4 know. We didn't represent OHSL.

5 Q. Okay. Which individuals at  
6 Provident were primarily responsible for the  
7 document?

8 MR. FISCHER: Objection.

9 A. That would involve  
10 communication --

11 MR. FISCHER: Well, no, you can  
12 answer who, you just can't tell about your  
13 discussions with them. Okay?

14 A. Employees of Provident?

15 Q. Yes.

16 MR. FISCHER: If you know, you can  
17 answer that.

18 Q. Employees or directors of  
19 Provident.

20 A. I can't -- I can't say. I can't

21 name one specific person.

22 Q. Okay. Well, name everyone you can  
23 who was involved in this at Provident.

24 MR. FISCHER: Who was involved in  
25 what?

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1 MR. BRAUTIGAM: Defendant's  
2 Exhibit 1.

3 MR. FISCHER: Objection. Go  
4 ahead, but don't reveal any communications.  
5 Who you spoke to.

6 A. I spoke to Mark Magee about this  
7 document.

8 Q. Okay.

9 A. And I may -- I don't recall, I may  
10 have spoken to Tony Stollings about this  
11 document.

12 Q. Anyone else?

13 A. At Provident?

14 Q. Yes.

15 A. No.

16 Q. Okay. Who was responsible at KMK  
17 for finalizing this document?

18 MR. FISCHER: Objection.

19 A. KMK's not responsible for  
20 finalizing this document in its entirety. That  
21 question is not -- I can't respond to your  
22 question. KMK is not solely responsible for  
23 this document.

24 Q. Who wrote the first page of this  
25 document?

Page 20

1 MR. FISCHER: Objection.

2 A. It looks like Norbert Brinker of  
3 OHSL.

4 Q. Why do you say that?

5 A. Because it's a letter signed by  
6 him.

7 Q. Does that automatically imply to  
8 you that he wrote it?

9 A. Yes, it does.

10 Q. Okay. What computer system did  
11 this come off --

12 MR. FISCHER: Do you know or are  
13 you guessing?

14 A. I'm -- OHSL is responsible for  
15 this.

16 MR. FISCHER: But he asked who  
17 wrote it. Do you know?

18 A. Specifically I don't. I assume --

19 MR. FISCHER: Well, then tell him  
20 that. Tell him.

21 A. I assume it was Norbert Brinker.

22 MR. FISCHER: Don't guess. You  
23 don't have to guess.

24 Q. Okay. What computer system did  
25 the first page of this document come off?

Page 21

1 MS. ROWE: Objection.

2 MR. FISCHER: Objection.

3 A. I don't know.

4 Q. Okay. Is it possible that it came  
5 off the KMK computer system?

6 MR. FISCHER: Objection, form.  
7 Anything is possible. Answer his question.

8 A. It's possible that it came off of  
9 Dinsmore & Shohl's or KMK's. I -- I can't say

10 Q. Okay. Are there any other  
11 possibilities as to where the first page of  
12 this document came from?

13 MS. ROWE: Objection.

14 MR. FISCHER: Objection.

15 A. Yes, there are.

16 Q. Okay. What are those  
17 possibilities?

18 A. The financial printer. I'm sorry,  
19 I -- I don't recall who the financial printer  
20 was. The financial printer.

21 Q. Okay. And where did the financial  
22 printer get the information?

23 MS. ROWE: Objection.

24 MR. FISCHER: Objection. Assumes  
25 he knows. You've laid no foundation for any of

6 (Pages 18 to 21)



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Page 24

1 these questions. Objection. Wasting time.  
2 A. Well, can you repeat the question,  
3 please?

4 (Record read by Reporter.)

5 MS. ROWE: Objection.

6 MR. FISCHER: Same objection.

7 A. I -- I'm not -- I'm not certain.  
8 I don't recall.

9 Q. How did the financial printer get  
10 the information that KMK had produced?

11 MR. FISCHER: Objection.

12 MS. ROWE: Object to form. What  
13 information are we talking about?

14 MR. FISCHER: I don't even know  
15 what we're talking about. Are we talking about  
16 an exhibit?

17 A. I don't know what information  
18 you're talking about KMK producing.

19 Q. Do you see Defendant's Exhibit 1  
20 in front of you?

21 A. I have already told you that I  
22 have -- do, yes.

23 Q. Okay. Did KMK produce parts of  
24 this document?

25 MR. FISCHER: Objection.

1 A. I told you that KMK facilitated in  
2 the preparation of certain disclosures in this  
3 document relating to Provident.

4 Q. What do you mean by "facilitated"?

5 A. We, in collaboration with  
6 Provident, helped to prepare some of the  
7 disclosures in the document relating to  
8 Provident.

9 Q. Did KMK have any obligation to  
10 check information that was provided by OHSL and  
11 their counsel?

12 A. No.

13 MR. FISCHER: Objection.

14 MS. ROWE: Objection. Calls for  
15 legal conclusion.

16 Q. Why not?

17 A. No. Provident was KMK's client in  
18 this transaction. OHSL was not KMK's client in  
19 this transaction.

20 Q. So if OHSL submitted information  
21 that later turned out to be incorrect, that  
22 would be OHSL's problem, correct?

23 MS. ROWE: Objection.

24 MR. FISCHER: Objection. Do you  
25 know?

Page 23

Page 25

1 A. What do you mean by produce?

2 Q. Write.

3 A. KMK facilitated in the preparation  
4 of disclosures relating to Provident in this  
5 document.

6 Q. Did KMK write any sections of this  
7 document?

8 MR. FISCHER: If you can answer.

9 A. What do you mean by "write"?

10 Q. You don't know what the word write  
11 means?

12 A. I'm asking you. I don't  
13 understand what its context is in the context  
14 of your question.

15 Q. Well, the way this works is I get  
16 to ask the questions. If you don't understand  
17 what the word write means, that's fine. You  
18 can just say I don't understand what the word  
19 write means and I'll go on with the deposition.

20 MS. ROWE: Objection.

21 MR. FISCHER: Objection. Don't  
22 argue with the witness. If you continue to  
23 argue with the witness, we'll leave and go to  
24 the magistrate. You did it yesterday, it's  
25 going to stop.

1 A. It -- I don't know.

2 Q. Okay. Is this a joint document in  
3 any sense?

4 A. Again, I'm not clear what you mean  
5 by "joint."

6 Q. Was it filed jointly on behalf of  
7 OHSL and Provident with the SEC?

8 A. This document was filed with the  
9 SEC by both parties, OHSL and Provident.

10 Q. And is there a disclaimer in there  
11 that Provident makes where it says, Look, we're  
12 only responsible for the Provident parts of the  
13 document, we're not responsible for the whole  
14 thing?

15 MR. FISCHER: Objection. Do you  
16 want to read the whole document and find out?

17 A. I'd have to review the document to  
18 determine whether or not there's a disclaimer  
19 like that in there.

20 Q. Okay. Well, maybe you can do that  
21 over the luncheon recess.

22 MR. FISCHER: No, he's not doing  
23 work over lunch.

24 (Plaintiff's Exhibit Number 43  
25 was marked for identification.)

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1 Q. Let me hand you what has been  
2 marked as Deposition Exhibit 43 and ask you to  
3 take a look at it. Have you seen that document  
4 before?

5 A. Yes.

6 Q. What is that document?

7 A. It appears to be the description  
8 of me on our firm's web site.

9 Q. Okay. And it talks about your  
10 practice group being business representation in  
11 transactions. Do you see that?

12 A. Can you point that out to me?

13 Q. Yes, right next to your --

14 A. Yes.

15 Q. And that's the practice group that  
16 you currently work in, correct?

17 A. The official name of our practice  
18 group is the public business group. I believe  
19 that's the official name of our practice group.

20 Q. And who's the chairman of that  
21 practice group?

22 MR. FISCHER: Objection.

23 A. Right now?

24 Q. Yes.

25 A. Ed Steiner.

1 MR. FISCHER: Objection.

2 A. The representation of clients in  
3 connection with a variety of business  
4 transactions and general corporate  
5 representation.

6 Q. Okay. Now, it says that you have  
7 overseen more than 300 acquisitions and  
8 divestiture transactions in the past five years  
9 with an aggregate transaction value of over  
10 billions of dollars?

11 MR. FISCHER: Objection.

12 A. No.

13 MR. FISCHER: That's not what that  
14 says, misreading the document again.

15 Q. Okay. Could you read that  
16 section, please?

17 A. Which section?

18 Q. Starts, "He is part of the  
19 transactions team."

20 A. "He is part of the transactions  
21 team at KMK that has overseen more than 300  
22 acquisition and divestiture transactions in the  
23 past five years with an aggregate transaction  
24 value in the billions of dollars."

25 Q. Okay. Is that true?

Page 27

Page 29

1 Q. Who did you work with in 1999?

2 MS. ROWE: Objection.

3 MR. FISCHER: Objection.

4 MS. ROWE: Ever or related to this  
5 transaction?

6 MR. FISCHER: He asked for  
7 everybody.

8 A. A lot of people.

9 Q. Okay. I understand that this  
10 practice group did not exist in 1999; is that  
11 correct?

12 MR. FISCHER: Which practice  
13 group?

14 Q. The business representation and  
15 transactions, whatever he said, the public  
16 business.

17 A. That specific practice group did  
18 not exist in 1999.

19 Q. Okay. What practice group were  
20 you associated with, if any, during the summer  
21 of 1999 when you worked on the OHSL-Provident  
22 merger?

23 A. KMK's corporate practice group.

24 Q. Okay. What's the function of the  
25 corporate practice group?

1 A. Yes.

2 Q. Okay. Are you a securities  
3 lawyer?

4 A. I practice securities law. And  
5 it's one of -- securities regulation is a  
6 practice area that I work in.

7 Q. Okay. Are you an expert in  
8 business planning and formation?

9 MR. FISCHER: Objection.

10 A. I've never been qualified by a  
11 court as an expert in that, although I practice  
12 in those areas.

13 Q. Do you hold yourself out as an  
14 expert in that area?

15 MR. FISCHER: Which area?

16 Q. Business planning and formation.

17 A. I believe my practice area has  
18 been concentrated in those areas, but I do  
19 not -- again, I have never been qualified by a  
20 court as an expert. I don't understand what  
21 you mean by expert, I guess.

22 Q. Okay. Do you consider yourself to  
23 be an expert in business planning and  
24 formation?

25 MS. ROWE: Objection. Asked and



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1 answered.  
 2 MR. FISCHER: Same objection.  
 3 Going over this again, wasting time.  
 4 A. I'd like to repeat my prior  
 5 answer.  
 6 Q. Well, it's nonresponsive to the  
 7 question. Do you consider yourself to be an  
 8 expert in mergers and acquisitions?  
 9 MR. FISCHER: Same objection.  
 10 A. I have a concentration in that  
 11 area. I do not -- I have not been qualified as  
 12 an expert in that area.  
 13 Q. Do you consider yourself to be an  
 14 expert in mergers and acquisitions?  
 15 MS. ROWE: Objection.  
 16 MR. FISCHER: Objection. Totally  
 17 irrelevant.  
 18 A. I don't -- it's not clear to me  
 19 what you mean by expert. Again, I have a  
 20 concentration in those areas.  
 21 Q. Have you used the term expert in  
 22 your professional life?  
 23 A. Yes.  
 24 Q. Okay. Do you have an  
 25 understanding of what it means?

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1 MR. FISCHER: We're wasting time.  
 2 A. I've practiced corporate law for  
 3 almost seven years now. And a part of that  
 4 practice has been in connection with the  
 5 representation of clients in merger and  
 6 acquisition transactions.  
 7 Q. And approximately how many mergers  
 8 and acquisitions transactions have you been  
 9 involved in?  
 10 A. Over the past seven years?  
 11 Q. Yes.  
 12 MS. ROWE: Objection.  
 13 A. At least a hundred. I, I -- I'm  
 14 guessing.  
 15 MR. FISCHER: Don't guess.  
 16 A. I'm guessing.  
 17 Q. How many of those transactions  
 18 resulted in litigation?  
 19 A. Excuse me?  
 20 MR. FISCHER: Objection.  
 21 Q. How many of those transactions  
 22 resulted in litigation?  
 23 MR. FISCHER: Do you know?  
 24 A. This is the only one that I'm  
 25 aware of.

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1 A. In certain circumstances, yes.  
 2 Q. Okay. In the context of a lawyer  
 3 who holds himself out to be an expert, do you  
 4 have an understanding of what that would mean?  
 5 A. It depends on the area and the  
 6 circumstances.  
 7 Q. Okay. Are you an expert in  
 8 mergers and acquisitions?  
 9 A. I have a concentration in those  
 10 areas. I have never been qualified by a court  
 11 as an expert in those areas. A large part of  
 12 my practice is in those areas. I don't -- I'm  
 13 not qualified -- I've never been qualified by a  
 14 court as one.  
 15 Q. Okay. Approximately how much  
 16 experience do you have in mergers and  
 17 acquisitions?  
 18 A. Are you asking for a time?  
 19 MR. FISCHER: Objection to the  
 20 form.  
 21 MS. ROWE: Objection to relevance.  
 22 A. A period of time in which I  
 23 practiced?  
 24 Q. Any way that you want to describe  
 25 it.

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1 Q. Okay. Are you familiar with the  
 2 term conflict of interest?  
 3 A. I've heard the term.  
 4 Q. Have you ever used that term as a  
 5 securities lawyer?  
 6 A. Are you saying in connection with  
 7 my practice of securities law?  
 8 Q. Yes.  
 9 A. In a securities regulation type of  
 10 context?  
 11 Q. Yes.  
 12 A. Have I used that term?  
 13 Q. Yes.  
 14 A. I don't recall that.  
 15 Q. Okay. Has anyone used it in your  
 16 presence?  
 17 MR. FISCHER: Objection. Don't  
 18 discuss anything that you and I have discussed.  
 19 A. I don't recall.  
 20 Q. Okay. Do you have a working  
 21 understanding of what a conflict of interest  
 22 is?  
 23 MR. FISCHER: Objection.  
 24 MS. ROWE: Objection.  
 25 A. The term conflict of interest, it

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1 depends on the circumstances in which it is  
2 used, so I -- it's hard to say.

3 Q. Do you have an understanding of  
4 what a conflict of interest might be with  
5 respect to attorney representation?

6 MR. FISCHER: Objection.

7 A. It would depend on the  
8 circumstances in which you're talking about.

9 Q. Okay. In this transaction you  
10 represented Provident; is that correct?

11 A. KMK represented Provident, that is  
12 correct.

13 Q. And KMK could not have represented  
14 both Provident and Oak Hills at the same time;  
15 is that correct?

16 MS. ROWE: Objection.

17 MR. FISCHER: Objection.

18 MR. FISCHER: If you know.

19 A. I want to discuss this --

20 MR. FISCHER: Well, if you -- do  
21 you know? If you know, answer the question.  
22 If you don't --

23 A. Can you repeat the question?

24 Q. Could KMK have represented both  
25 Provident and Oak Hills in this merger

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1 question.

2 MR. FISCHER: That wasn't the  
3 prior question, badgering the witness.

4 THE WITNESS: Can I have the  
5 question repeated to me, please?

6 (Record read by Reporter.)

7 MS. ROWE: Same objection.

8 MR. FISCHER: Same objection.

9 A. I don't know how I can provide an  
10 -- an answer to that.

11 BY MR. BRAUTIGAM:

12 Q. You said something about their  
13 interests may be adverse. What did you mean by  
14 that?

15 A. In -- that's a -- I hoped I used  
16 the word potentially, did I not?

17 (Record read by Reporter.)

18 A. I didn't say they were adverse, I  
19 said they were potentially.

20 Q. Okay. Is there a situation where  
21 they would not be adverse when you're  
22 negotiating a merger transaction with a buyer  
23 and a seller?

24 MR. FISCHER: In any instance?

25 Q. In this case.

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1 transaction?

2 MR. FISCHER: Objection,  
3 hypothetical also.

4 A. Depending on the circumstances,  
5 likely not.

6 Q. Okay. Why not?

7 A. I -- I can't articulate the exact  
8 reasons why, but depending on the  
9 circumstances, I would think that the interests  
10 of the parties would be so adverse to one  
11 another as to result in a conflict or a  
12 potential conflict.

13 Q. What circumstances did you refer  
14 to in your previous answer?

15 A. There is a variety of  
16 circumstances that can be cited in potential  
17 conflict situations. I don't -- I can't  
18 enumerate them.

19 Q. Well, with respect to this  
20 particular merger, what circumstances would  
21 have prevented KMK from representing both  
22 Provident Financial and OHSL?

23 MS. ROWE: Object to the form.

24 MR. FISCHER: Objection.

25 MS. ROWE: That wasn't your prior

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1 MR. FISCHER: Objection.

2 MS. ROWE: Objection.

3 A. I can't answer these questions.  
4 They're so speculative and hypothetical and  
5 dependent upon circumstances that it's very  
6 difficult for me to provide answers to this --  
7 to this line of questions.

8 Q. Are you familiar with the term  
9 materiality?

10 A. In the context of when?

11 Q. Securities law.

12 A. Yes, I am.

13 Q. Okay. What is your understanding  
14 of the term materiality?

15 MR. FISCHER: Objection.

16 A. Materiality is another term that  
17 is highly contingent upon the facts and  
18 circumstances of a particular scenario.

19 Q. What facts and circumstances is  
20 materiality contingent upon, as you used those  
21 words in your previous answer?

22 MR. FISCHER: Objection. Broad.

23 A. I don't know how to answer that  
24 question. There are so many different  
25 considerations that are to be considered in

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1 connection with that that I don't know how to  
2 answer that.

3 Q. Okay. Are you familiar with the  
4 term material misrepresentation?

5 A. In connection with what?

6 Q. The securities laws.

7 A. I've -- I've heard it used before,  
8 yes.

9 Q. Okay. What do you understand that  
10 term to mean?

11 A. It depends on the situation in  
12 which that term is applied.

13 Q. In the context of the securities  
14 laws, what do you understand a material  
15 misrepresentation to be?

16 MR. FISCHER: Objection.

17 MS. ROWE: Objection. Asked and  
18 answered.

19 MR. FISCHER: Badgering the  
20 witness.

21 A. I'd like to repeat my prior  
22 answer.

23 Q. Can you give me an example of  
24 material misrepresentation?

25 A. I cannot think of one off the top

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1 of my head.

2 Q. Okay. Are you familiar with the  
3 phrase material omission?

4 A. I've heard that term before.

5 Q. Okay. What do you understand that  
6 term to be?

7 A. A term whose meaning -- that has a  
8 meaning that is, again, dependent upon the  
9 facts and circumstances of a particular  
10 scenario.

11 Q. Can you think of an example of a  
12 material omission?

13 MS. ROWE: Objection.

14 MR. FISCHER: Same.

15 A. Not at this moment.

16 Q. Okay. Are you familiar with the  
17 phrase proxy materials?

18 A. Yes.

19 Q. What are proxy materials?

20 A. Materials prepared by an issuer  
21 and its counsel to the issuer's shareholders in  
22 connection with an action to be voted upon or  
23 acted upon at a meeting.

24 Q. Is it important that the proxy  
25 materials be truthful?

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1 MR. FISCHER: Objection.

2 A. What do you mean by "truthful"?

3 Q. Well, you swore to tell the truth  
4 today. Did you understand what you meant when  
5 you swore to tell the truth?

6 A. I did, yes.

7 Q. Good. Well, I mean it in the same  
8 way.

9 A. Well, the thing about truths is --  
10 truthfulness in the context of your question is  
11 difficult for me to understand. You know, two  
12 people can see the same event, have the same  
13 description of -- or different descriptions of  
14 the exact same event and each person can  
15 believe the event to be true and they're  
16 providing a truthful description of the event,  
17 even though the descriptions are different. So  
18 I'm not certain how you're trying to use that  
19 term here.

20 Q. I'm trying to use it as it's  
21 commonly used in the English language.

22 MR. FISCHER: There's no question  
23 pending.

24 A. I don't know what the question is.

25 Q. The question is. Do you believe

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1 it's important for the proxy materials to be  
2 truthful?

3 A. I believe that the law requires  
4 that the proxy materials provide accurate  
5 information in compliance with securities laws  
6 and the, you know, provisions against anti  
7 fraud, including 10(B)5 and the other  
8 regulations. To the extent that equates with  
9 your definition of truthful, that it is -- but  
10 in the context of the question in which you're  
11 asking it, it's so difficult for me to  
12 understand and provide a reasonable answer,  
13 that I -- I can't say.

14 Q. Okay. What is your understanding  
15 of the 10(B)5 and other securities regulations  
16 as you mentioned it in your previous answer?

17 MR. FISCHER: Objection.

18 MS. ROWE: Objection.

19 MR. FISCHER: Books are written on  
20 10(B)5. You want him to answer that question?  
21 MR. BRAUTIGAM: Yes. That's why I  
22 asked it.

23 MR. FISCHER: Okay. We'll be here  
24 all day. Wasting time. Are you going to pay  
25 him for his time so you can learn what 10(B)5

11 (Pages 38 to 41)

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1 is? Just wasting time, Mr. Brautigam.  
 2 A. In a nutshell, Rule 10(B)5  
 3 prevents misrepresentations and material  
 4 omissions.  
 5 Q. And what other securities  
 6 regulations are you familiar with?  
 7 MR. FISCHER: Objection.  
 8 A. I -- are you asking me to cite  
 9 regulations?  
 10 Q. I'm asking you to cite what you  
 11 referred to in your previous answer. The --  
 12 MR. FISCHER: Name them all.  
 13 A. The 1933 Act and the 1934 Act.  
 14 Q. Okay. What's your understanding  
 15 of the 1933 Act?  
 16 MS. ROWE: Objection.  
 17 MR. FISCHER: Objection.  
 18 Harassment.  
 19 A. Where would you like me to begin?  
 20 It has a number of sections.  
 21 Q. Just a general working  
 22 knowledge -- general working definition.  
 23 MR. FISCHER: Objection.  
 24 MS. ROWE: Objection.  
 25 A. Of the '33 Act?

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1 Q. Yes.  
 2 A. I'm sorry, I still don't  
 3 understand the question. You're asking me for  
 4 what my general understanding of the 1933 Act  
 5 is? Is that what your question is?  
 6 Q. Yes.  
 7 MR. FISCHER: Same objection.  
 8 A. I don't know how to answer that  
 9 question. It's a -- it's very broad and  
 10 comprehensive. The set of laws and the  
 11 regulations promulgated pursuant to the Act are  
 12 too extensive for us to discuss even over the  
 13 course of the next month.  
 14 Q. Okay. What's your understanding  
 15 of the '34 Act?  
 16 A. I have the same response that I  
 17 just gave with respect to the '33 Act in terms  
 18 of its breadth.  
 19 Q. Okay. Now, with respect to  
 20 Section 10(B), you said in substance that it  
 21 was designed to prevent misrepresentations and  
 22 material omissions; is that correct?  
 23 A. Prevent isn't the right word. I  
 24 should rephrase that and say make unlawful.  
 25 Q. Make unlawful, okay.

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1 A. Material misrepresentations and  
 2 material omissions, yes.  
 3 Q. And in the course of your work as  
 4 a securities lawyer, you are required to make  
 5 judgments with respect to materiality all the  
 6 time, correct?  
 7 MR. FISCHER: Objection.  
 8 A. No, not all the time, no.  
 9 Q. Okay. Well, you're required to  
 10 make judgments on materiality from time to  
 11 time, correct?  
 12 MR. FISCHER: Objection.  
 13 A. In collaboration with clients and  
 14 other members of our firm, we provide advice on  
 15 whether disclosure of certain items is required  
 16 pursuant to the definition of materiality.  
 17 Q. Right. And that advice requires  
 18 you to have an understanding and a definition  
 19 of materiality in certain circumstances,  
 20 correct?  
 21 MS. ROWE: Objection. Asked and  
 22 answered.  
 23 MR. FISCHER: Objection. We've  
 24 gone through this.  
 25 MS. ROWE: He already said it

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1 depends on the circumstances. This is supposed  
 2 to be a deposition of a fact witness, not --  
 3 MR. FISCHER: In fact, that's what  
 4 you represented to the Court, he was a fact  
 5 witness. You haven't asked a fact question  
 6 yet.  
 7 THE WITNESS: Can the question be  
 8 repeated, please?  
 9 (Record read by Reporter )  
 10 A. It -- it requires us -- it  
 11 requires us to try to discern what materiality  
 12 is.  
 13 Q. And what factors do you consider  
 14 in making a materiality assessment?  
 15 MS. ROWE: Objection.  
 16 MR. FISCHER: Objection.  
 17 A. I, I can't begin to answer that  
 18 question. There -- it's such a fact specific  
 19 and circumstances based determination.  
 20 Q. Okay. We'll get to that. Are you  
 21 familiar with the term S-4?  
 22 A. Yes.  
 23 Q. What is an S-4?  
 24 A. Do you mean a form S-4?  
 25 Q. Yes.

12 (Pages 42 to 45)

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1 A. A form S-4 is a registration  
2 statement required by the Securities --  
3 contemplated by the Securities & Exchange  
4 Commission in connection with business  
5 combinations.

6 Q. And did this business combination  
7 between OHSL and Provident have a registration  
8 statement?

9 A. Yes, it did.

10 Q. Did you work on that registration  
11 statement?

12 A. I, I represented Provident in  
13 connection with the preparation of it, yes.

14 Q. What was being registered?

15 A. Our -- Provident common stock.

16 Q. And that was being created and  
17 thus the need for a registration statement,  
18 correct?

19 MR. FISCHER: Objection.

20 A. Provident common stock has been in  
21 existence for many years.

22 Q. Well, the shares that went to the  
23 OHSL shareholders, okay? Were they being  
24 created or were they coming from another  
25 source?

1 the preparation or correction of financial  
2 statements that have previously been released.

3 Q. When you say the preparation, what  
4 did you mean in your previous answer?

5 A. The providing of financial  
6 statements that update or correct or clarify  
7 previously prepared financial statements.

8 Q. Is it your understanding that a  
9 restatement is only issued where the prior  
10 financial statements were materially false and  
11 misleading?

12 MR. FISCHER: Objection.

13 MS. ROWE: Objection.

14 THE WITNESS: Can that question be  
15 repeated, please?

16 (Record read by Reporter.)

17 A. I don't know.

18 Q. Are you familiar with Provident's  
19 restatements from March 5th of this year?

20 A. I understand that there was a  
21 restatement of financials at or about that  
22 time, yes.

23 Q. Okay. And what is your an  
24 understanding of what that restatement meant  
25 with respect to the earlier financials?

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1 MR. FISCHER: Objection.

2 A. Provident Financial Group was  
3 issuing shares.

4 Q. Okay. When you say was issuing,  
5 what does that mean?

6 A. Providing shares to OHSL's  
7 shareholders as consideration for the merger.

8 Q. And these were shares that  
9 previously did not exist, correct?

10 MR. FISCHER: Objection.

11 A. No, that's not right.

12 Q. Where did these shares come from?

13 A. These shares were authored by  
14 Provident's articles of incorporation.

15 Q. Were they outstanding in the  
16 summer of 1999?

17 A. I don't recall.

18 Q. Okay. Are you familiar with the  
19 term restatement?

20 A. In connection with what?

21 Q. Companies' financial statements.

22 A. I've heard that term, yes.

23 Q. Okay. What do you understand the  
24 term restatement to mean?

25 A. The preparation of financials --

1 MR. FISCHER: Objection.

2 MS. ROWE: Objection.

3 A. I don't know.

4 Q. Okay. Doesn't it mean that  
5 Provident's earlier financials were materially  
6 misstated from 1997 to 2002?

7 MR. FISCHER: Objection.

8 MS. ROWE: Objection.

9 A. I don't know.

10 Q. You don't know how to interpret  
11 Provident's press release, for example?

12 MR. FISCHER: Objection.

13 MS. ROWE: Objection.

14 A. I don't understand the question  
15 and I don't -- and I don't know.

16 Q. Okay. You don't understand what  
17 aspect of the question? The question is this:  
18 Does Provident's restatement on March 5th of  
19 2003 mean that its financials for the years  
20 1997 to 2002 were materially false and  
21 misleading?

22 MR. FISCHER: Objection. Asked  
23 and answered.

24 MS. ROWE: Objection. Asked and  
25 answered, and that wasn't the last question.



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1 MR. FISCHER: That wasn't the last  
2 question.

3 A. I already told you this. I don't  
4 know and I find your lines of questions  
5 abusive.

6 Q. Okay. Are you familiar with the  
7 form 8-K?

8 A. Yes, I am.

9 Q. What is a form 8-K?

10 A. It is a form promulgated pursuant  
11 to the 1934 Act that is a vehicle for a variety  
12 of disclosures to be made by issuers on a  
13 current basis as opposed to a periodic basis.

14 Q. If the chairman of the audit  
15 committee of a public company resigned, is that  
16 something that you would want to consider  
17 filing an 8-K on?

18 MR. FISCHER: Objection.

19 MS. ROWE: Objection to form.

20 MR. FISCHER: Hypothetical.

21 A. It depends on the circumstances.

22 Q. What circumstances would it depend  
23 upon?

24 A. The form 8-K requirements.

25 Q. Okay. What is your understanding

1 that from outside sources or anything else, you  
2 can disclose it.

3 A. Sure. I don't recall discussing  
4 with anyone a resignation or whether or not it  
5 was to be disclosed in this document.

6 Q. Okay. Let's talk about  
7 Defendant's Exhibit 1. What is the purpose of  
8 Defendant's Exhibit 1?

9 MR. FISCHER: Objection.

10 A. Of the entire document?

11 Q. Yes.

12 A. To give notice to OHSL's  
13 shareholders of a special meeting at which  
14 shareholders can consider the adoption of the  
15 merger agreement.

16 Q. So the purpose of the document is  
17 to give advice with respect to the transaction,  
18 correct?

19 MS. ROWE: Objection --

20 MR. FISCHER: Objection.

21 MS. ROWE: -- to the form. He  
22 said notice.

23 A. No.

24 Q. It's not? Do you expect  
25 shareholders to rely on this document?

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1 of the form 8-K requirements for a director's  
2 resignation?

3 MR. FISCHER: Same objection.

4 A. I understand that the form 8-K  
5 requires that the director must submit a  
6 written resignation that provides a description  
7 of the basis for his resignation and with a  
8 detailing of the disagreement and also requests  
9 that the letter be disclosed to the public by  
10 means of form 8-K filing.

11 Q. And is that the only circumstance  
12 under which a form 8-K can be issued when a  
13 director resigns?

14 MR. FISCHER: Objection.

15 A. To my knowledge, yes.

16 Q. Okay. Did you ever have any  
17 discussions about whether or not to disclose in  
18 Defendant's Exhibit 1, the director of -- the  
19 resignation of OHSL director Thomas Herron?

20 MR. FISCHER: Objection.

21 MS. ROWE: Objection.

22 MR. BUCKLEY: Objection.

23 MR. FISCHER: To the extent it  
24 calls for disclosure of any communication with  
25 a client, don't disclose that. If you know

1 MR. FISCHER: Objection.

2 A. OHSL's shareholders?

3 Q. Yes.

4 A. I'm not -- we're not counsel for  
5 OHSL, so I don't know how to answer that  
6 question.

7 Q. Well, you knew that the document  
8 would be sent to OHSL's shareholders, correct?

9 A. The first page of it indicates  
10 that it's being sent to all shareholders.

11 Q. And you knew that in the summer of  
12 1999, correct?

13 A. That's correct.

14 Q. And didn't you expect OHSL  
15 shareholders to reasonably rely on the contents  
16 of the document?

17 A. I think that's a fair statement,  
18 yes.

19 Q. Okay. Are you familiar with the  
20 word unanimous?

21 A. I've heard it used before.

22 Q. Okay. What is your understanding  
23 of the word unanimous?

24 A. In the context of what?

25 Q. As it's commonly used in the



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1 English language.

2 MR. FISCHER: Objection.

3 MS. ROWE: Objection.

4 MR. FISCHER: There's many  
5 definitions of unanimous if you look in the  
6 dictionary.

7 A. That's interesting. I was reading  
8 a -- I can't remember what I read, but there  
9 was a senate vote not too long ago, it was 98  
10 to nothing. And I understand there's a hundred  
11 senators, two of whom were unable to  
12 participate in the vote. And the article  
13 published, you know, indicated that the vote  
14 was unanimous, 98 to nothing with two people  
15 not voting being unanimous. So you know, if --  
16 recently that is consistent with my  
17 understanding of unanimous, where you have no  
18 dissent of record.

19 Q. You said "recently." Did you have  
20 a different understanding before recently?

21 A. No, I did not. I use that as a  
22 way of helping you to understand what I  
23 understand unanimous means.

24 Q. Now, with the example you used  
25 about the 98 senators voting in favor of

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1 the lead of the article you're referring to.

2 A. No, I don't recall.

3 Q. Okay. Did it say something like  
4 the United States Senate voted unanimously with  
5 98 senators voting in favor of and two senators  
6 not participating to approve XYZ?

7 A. No. I recall that the word  
8 unanimous was used to include the concept of  
9 two senators did not vote.

10 Q. I see. Do you think in terms of  
11 understanding that that it was important that  
12 the concept that the two senators did not vote  
13 be included?

14 A. I think it doesn't change the  
15 meaning of unanimous.

16 Q. Okay.

17 A. I'd also like to say that the, you  
18 know, that's consistent with this document.  
19 And unanimous here is, from my understanding,  
20 properly used. You know, there were no -- to  
21 my knowledge, there were no dissents of record  
22 of any sort, no OHSL indicated any, any dissent  
23 at the time of the meeting or, or on the  
24 records or minutes of the company. And as a  
25 result, based on that understanding, the use of

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1 something, the nonvote of two senators was  
2 clearly disclosed, correct?

3 A. In this news -- in this news, I  
4 don't -- it was in the news, yes. It was clear  
5 that there were two people out there or two  
6 potential people out there who didn't vote, but  
7 the vote was still characterized as unanimous,  
8 right.

9 Q. Right. But it was characterized  
10 as unanimous. Also it was characterized as  
11 there were two senators that didn't vote; is  
12 that correct?

13 A. That was included in the  
14 definition of unanimous from the news article I  
15 saw.

16 Q. So what do you mean by that?  
17 Could you repeat the lead, if you will, of the  
18 article that you're talking about?

19 MR. FISCHER: Objection.

20 A. Are you asking me to repeat my  
21 answer?

22 Q. Excuse me?

23 A. Are you asking me to repeat my  
24 answer?

25 Q. No, I'm asking you if you remember

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1 the word unanimously here is -- is accurate.

2 Q. Okay. How many directors did OHSL  
3 have in the summer of 1999?

4 A. I don't recall.

5 Q. Okay. Did that ever change?

6 MR. FISCHER: Objection. Do you  
7 know?

8 MS. ROWE: You mean ever over  
9 time?

10 MR. FISCHER: Ever? I mean, these  
11 questions --

12 A. I don't understand the question.

13 Q. Okay. OHSL had a certain number  
14 of directors in the beginning of 1999. Do you  
15 accept that?

16 A. I assume that's correct.

17 Q. Okay. Did that number ever change  
18 on or about July 30th of 1999?

19 A. I don't know.

20 Q. Okay. Did KMK have access to  
21 OHSL's Board minutes?

22 A. Which ones?

23 Q. All of the Board minutes for the  
24 last five years.

25 A. From today to five years back?

15 (Pages 54 to 57)

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1 Q. From 1999 to five years back.  
 2 A. What date in 1999?  
 3 Q. July of 1999.  
 4 A. I don't know.  
 5 Q. Okay. Did anyone at KMK ever  
 6 review OHSL's Board minutes?  
 7 A. I don't know.  
 8 Q. Did anyone at KMK ever review  
 9 KMK -- OHSL's committee minutes?  
 10 A. I don't know.  
 11 Q. Isn't that common in a merger and  
 12 acquisition, that the acquiring entity review  
 13 the seller's Board minutes?  
 14 MR. FISCHER: Objection.  
 15 A. The acquiring entity here is  
 16 Provident. Provident could have reviewed  
 17 those, not necessarily KMK.  
 18 Q. Do you know if anyone at Provident  
 19 reviewed those Board minutes?  
 20 A. I don't know.  
 21 Q. Who at Provident might have  
 22 reviewed those Board minutes?  
 23 MR. FISCHER: Objection to the  
 24 form.  
 25 A. I don't know.

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1 Q. Okay. You said that you believe  
 2 the word unanimously was properly used in this  
 3 document, is that correct?  
 4 A. Based on my understanding of the  
 5 facts, yes.  
 6 Q. Okay. What is your understanding  
 7 of the facts with respect to the vote  
 8 referenced in this sentence, it's on the first  
 9 page of Defendant's Exhibit 1. Your Board of  
 10 Directors unanimously approved the acquisition  
 11 and believes that it is in the best interest of  
 12 OHSL stockholders. What is your understanding  
 13 of the facts referencing that vote that you  
 14 said you believe was correct?  
 15 A. First of all, this document is an  
 16 OHSL document -- this page -- this notice is an  
 17 OHSL notice, not a Provident notice.  
 18 Q. Let me interrupt you.  
 19 A. Are you going to let me finish?  
 20 MR. FISCHER: Let him finish his  
 21 answer, don't interrupt him.  
 22 Q. Finish your answer.  
 23 A. This is an OHSL letter, it's not a  
 24 Provident letter, it's not a KMK letter. This  
 25 letter was -- OHSL is ultimately responsible

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1 for the contents of this letter, OHSL and/or  
 2 its counsel.  
 3 Your question is about, as I  
 4 understand it, the accuracy of this statement,  
 5 The directors unanimously approved the  
 6 acquisition and believe it is fair, in the best  
 7 interest of OHSL shareholders. And your  
 8 question to me, as I understand it, is whether  
 9 or not I think that's correct, given the facts  
 10 and the circumstances that I know. Is that --  
 11 am I understanding the question correctly?  
 12 Q. I'm going to let you talk, and  
 13 when you're done I'll have an additional  
 14 question, so please speak until you're  
 15 finished.  
 16 A. I want to make sure I understand  
 17 the question.  
 18 Q. I'm not answering the questions.  
 19 A. I'm not -- I'm telling you that I  
 20 need to understand your questions in order to  
 21 answer them.  
 22 Q. Are you done with your answer?  
 23 MS. ROWE: He just said he  
 24 couldn't give an answer until he understood the  
 25 question.

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1 A. I'm trying to understand your  
 2 question.  
 3 Q. Okay. Are you done with what you  
 4 had to say?  
 5 A. Yes.  
 6 Q. Okay, good. I'm going to ask a  
 7 new question then. You said you believe that  
 8 this document is a responsibility of OHSL and  
 9 its counsel exclusively, correct? Only the  
 10 first page of Defendant's Exhibit 1, correct?  
 11 A. Among other sections and  
 12 disclosures in the document, that's correct.  
 13 With respect to this notice, that's correct.  
 14 Q. Okay. Let's talk about the first  
 15 page of the document only for a moment.  
 16 A. Okay.  
 17 Q. Do you believe that the first page  
 18 of the document is part of the proxy materials?  
 19 A. It's a notice that accompanies the  
 20 proxy materials. If -- yes, yes.  
 21 Q. Okay. Do you believe that the  
 22 proxy materials are joint proxy materials?  
 23 A. No.  
 24 MS. ROWE: Objection to form.  
 25 MR. FISCHER: Objection.

16 (Pages 58 to 61)

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1 A. No. Proxy materials are proxy  
2 materials.  
3 Q. Okay. So you believe that the  
4 proxy materials come from OHSL exclusively; is  
5 that correct?  
6 MR. FISCHER: Objection.  
7 MS. ROWE: Objection.  
8 MR. FISCHER: That was not his  
9 testimony.  
10 A. The proxy materials and prospectus  
11 parts are interwoven. The disclosures from the  
12 proxy materials are primarily OHSL words and  
13 responsibility. OHSL is the ultimate author of  
14 those materials relating to OHSL and the proxy  
15 materials. Interwoven into that is the  
16 prospectus part, for which Provident is  
17 responsible.  
18 Q. Do you believe that there's any  
19 joint responsibility for the overall document?  
20 MS. ROWE: Objection. Calls for a  
21 legal conclusion.  
22 MR. FISCHER: Objection.  
23 A. The document is a collaborative  
24 effort that is the result of the work of a  
25 number of parties, including Provident and

1 MR. FISCHER: Improper form.  
2 A. I don't know how to answer that.  
3 Q. I thought that was what you just  
4 said. I wanted to summarize and see if it was  
5 accurate.  
6 A. You can repeat my --  
7 Q. My question is this: You have the  
8 first page of the proxy materials and you said  
9 that this is not the responsibility of KMK or  
10 Provident; is that correct?  
11 A. This first page?  
12 Q. Yes.  
13 A. This first page is a notice from  
14 OHSL to OHSL's shareholders. As a result, it  
15 is not a document for which Provident is -- for  
16 which Provident is responsible. It was  
17 prepared by OHSL and its counsel.  
18 Q. Okay. So given that scenario,  
19 given your understanding, would it be difficult  
20 then for Ms. Rowe to represent both Provident  
21 and OHSL?  
22 MR. FISCHER: Objection.  
23 MS. ROWE: Objection.  
24 MR. FISCHER: Irrelevant.  
25 A. I don't know.

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1 OHSL.  
2 Q. Do you believe that there's any  
3 joint responsibility for the first page of  
4 Defendant's Exhibit 1?  
5 A. No.  
6 MS. ROWE: Objection.  
7 MR. FISCHER: Same objection.  
8 MS. ROWE: Calls for a legal  
9 conclusion.  
10 A. The first page is the sole  
11 responsibility of OHSL and its counsel.  
12 Q. Okay. So if there were material  
13 misstatements on the first page of that  
14 document -- are you with me so far?  
15 A. Um-hmm.  
16 Q. -- that would be the exclusive  
17 responsibility of OHSL and their counsel? Is  
18 that your testimony?  
19 MR. BUCKLEY: Objection.  
20 MR. FISCHER: Objection.  
21 MS. ROWE: Objection.  
22 Q. Is that your testimony?  
23 MR. FISCHER: Speculative.  
24 MS. ROWE: Calls for a legal  
25 conclusion.

1 Q. Well, based on your understanding  
2 of the first page of the document, how can Ms.  
3 Rowe and the KMK firm represent Provident,  
4 that's not responsible for what may be a  
5 material misstatement, and OHSL, which  
6 according to your testimony may be responsible  
7 if there's a material misstatement on the first  
8 page of that document?  
9 MR. FISCHER: Objection.  
10 MS. ROWE: Objection. Calls for a  
11 legal conclusion.  
12 MR. FISCHER: Calls for  
13 speculation.  
14 MS. ROWE: This is supposed to be  
15 a fact deposition. That's the permission that  
16 you were granted by the Court under the  
17 auspices of you claiming that these are fact  
18 witnesses, not a legal opinion deposition that  
19 this gentleman has no experience with.  
20 MR. FISCHER: Not just that --  
21 MS. ROWE: I mean, I, I --  
22 MR. FISCHER: -- this is so far  
23 off base, has no relevance. You've been  
24 wasting time, you've been badgering the  
25 witness. I object. If you know the answer to

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1 the question, answer it. If you don't --  
 2 A. I don't know the answer to the  
 3 question.  
 4 Q. Okay. What understanding do you  
 5 have of who voted -- what OHSL directors voted  
 6 with respect to the vote referenced on the  
 7 first page of Defendant's Exhibit 1?  
 8 MR. FISCHER: Objection.  
 9 THE WITNESS: Any I learned with  
 10 you?  
 11 MR. FISCHER: Anything that we  
 12 discussed, you can't talk to him about.  
 13 A. I can't say.  
 14 MR. BRAUTIGAM: So I want to get  
 15 your position straight, Pat. Your position is  
 16 he's allowed to say that this is entirely  
 17 unanimous and everything is fine, but when I  
 18 ask him for the basis of that statement,  
 19 because it came from you, he's not going to  
 20 testify about that? Is that correct?  
 21 MS. ROWE: No. We objected to  
 22 your questions.  
 23 MR. FISCHER: No, I objected then,  
 24 and that's not correct.  
 25 MR. BRAUTIGAM: Okay. Please

1 MR. BRAUTIGAM: Certainly. This  
 2 is the next document, so if you want to look at  
 3 that during the break.  
 4 (Brief recess.)  
 5 BY MR. BRAUTIGAM:  
 6 Q. Mr. Reuter, I have handed you what  
 7 has been previously marked as Plaintiff's  
 8 Deposition Exhibit 42 and I ask you to take a  
 9 look at this.  
 10 A. This document?  
 11 Q. Yes.  
 12 A. I don't see an exhibit on it, but  
 13 you're telling me it is Exhibit 42?  
 14 Q. Yes. Have you seen that document  
 15 before?  
 16 A. Are you referring to the cover  
 17 letter or the attachment?  
 18 Q. I'm referring to everything you  
 19 have in your hand.  
 20 A. I'm -- I'm pretty sure I've seen  
 21 it before, yes.  
 22 Q. What is Plaintiff's Deposition  
 23 Exhibit 42?  
 24 A. Well, do you want me to start with  
 25 the first page?

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1 clarify.  
 2 MR. FISCHER: He can answer what  
 3 he knows from the facts other than from me.  
 4 BY MR. BRAUTIGAM:  
 5 Q. What do you know about the OHSL  
 6 vote that's referenced on the first page of  
 7 Defendant's Exhibit 1?  
 8 MR. FISCHER: Other than anything  
 9 I've told you.  
 10 A. What do I -- what do I know? Your  
 11 question is what do I know about the OHSL  
 12 directors' vote?  
 13 Q. That's referenced --  
 14 A. On that page?  
 15 Q. -- in that sentence on the first  
 16 page of Defendant's Exhibit 1.  
 17 A. Other than what was privileged?  
 18 MR. FISCHER: Other than what I've  
 19 told you.  
 20 A. I -- I can't recall.  
 21 Q. Okay. Let's take a look at this  
 22 document here.  
 23 MS. ROWE: Before we get started,  
 24 can we take a break? We've been going more  
 25 than an hour.

1 Q. Sure.  
 2 MR. FISCHER: Let's do this.  
 3 Let's give him the one that's marked.  
 4 A. Oh, thank you. First page is a  
 5 cover letter from Mark Weiss to members of a  
 6 distribution list that's attached that  
 7 includes -- that indicates that attached are  
 8 marked and unmarked drafts of the S-4, which  
 9 has been revised to reflect recent changes and  
 10 requesting that comments should be given by  
 11 August 20th in contemplation of filing during  
 12 the week of 20 -- the 23rd. And then attached  
 13 to that is a distribution group list. And  
 14 attached to that is a draft of the S-4.  
 15 Q. Okay. What was Mark Weiss' role  
 16 in the OHSL-Provident merger?  
 17 MR. FISCHER: Objection.  
 18 A. Mark Weiss represented Provident  
 19 in connection with the S-4.  
 20 Q. Okay. When you say Provident, do  
 21 you mean Provident Bank, PFGI?  
 22 A. Provident Financial Group, Inc.  
 23 Q. Okay. Did he represent the  
 24 Provident directors as well?  
 25 A. Not to my knowledge.

18 (Pages 66 to 69)

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1 Q. Okay. Did you represent the  
2 Provident directors at all?  
3 MS. ROWE: Objection. Asked and  
4 answered.

5 MR. FISCHER: Objection. Going  
6 over this again.

7 A. I've answered it, this question,  
8 before and my answer is the same. No, I did  
9 not represent the directors.

10 Q. Okay. In representing Provident,  
11 PFGI, what did Mr. Weiss do in the  
12 OHSL-Provident merger?

13 MR. FISCHER: Objection.

14 A. He assisted in the preparation and  
15 filing of the S-4.

16 Q. Okay. And what was --

17 A. With respect --

18 Q. What specifically did he do?

19 MR. FISCHER: Objection.

20 A. This could take a while to  
21 explain. In general, Mark interacted with  
22 Provident to facilitate the preparation of  
23 Provident's disclosures in this document.

24 Q. Okay. And in interacting with  
25 Provident, did he draft text that's included in

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1 all the question was about was that page.

2 MS. ROWE: Objection.

3 A. That's not what you asked me. I  
4 recalled your question to be with respect to  
5 this cover page.

6 Q. No, it was with the rest of the  
7 document, so if we're confused, I apologize.

8 Okay. With respect to the rest of  
9 the document, okay, from Bates number 963 to  
10 Bates number 024, did Mark Weiss write, review  
11 and/or approve words and numbers in the  
12 document?

13 MR. FISCHER: Objection.

14 Different document, but go ahead.

15 A. Along with OHSL, its counsel, and  
16 Provident, Mark Weiss -- I understand Mark  
17 Weiss reviewed certain sections scattered  
18 throughout this document.

19 Q. Okay. Were you finished?

20 A. Perhaps not -- perhaps not every  
21 single word. I'm finished.

22 Q. Okay. Did you write, review or  
23 approve parts of this document, Plaintiff's  
24 Exhibit 42?

25 MR. FISCHER: Objection to the

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1 your hand?

2 MR. FISCHER: Objection.

3 Including the letter?

4 A. Mark Weiss drafted this cover  
5 letter. He signed this cover letter. And I  
6 don't understand what you mean by draft with  
7 respect to the rest of the document.

8 Q. Okay. Do you see the S-4, fourth  
9 page in?

10 A. (Witness nodded head.)

11 MR. FISCHER: Bates number 63?

12 Q. Yes. That has words and numbers,  
13 correct, through the rest of the document?

14 A. That's correct.

15 Q. Did Mark Weiss write or review or  
16 approve any of those words and numbers?

17 MR. FISCHER: Objection to the  
18 form of the question. Multiple questions.

19 A. Along with OHSL, its counsel, and  
20 Provident, Mark Weiss reviewed this cover page,  
21 yes.

22 Q. So it's your testimony that Mark  
23 Weiss reviewed only the cover page, which is  
24 Bates number KMK 03963; is that right?

25 MR. FISCHER: Objection. That's

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1 form, multiple questions.

2 A. Write, review or approve. I  
3 didn't approve anything in here. I prepared an  
4 initial draft of a section -- to the best of my  
5 recollection, I recall preparing an initial  
6 draft of the Description of Provident Financial  
7 Stock beginning on page 46.

8 I prepared an initial draft of  
9 that section and an initial draft of Comparison  
10 of Stockholder Rights. With respect to the  
11 disclosures in there on Provident, relating to  
12 Provident, Comparison of Stockholder Rights  
13 begins on page 47 and I believe ends on -- ends  
14 on page 52 --

15 Q. Okay.

16 A. -- I prepared an initial draft of  
17 those sections.

18 Q. Okay.

19 A. When I --

20 Q. Please continue.

21 A. When I say I prepared an initial  
22 draft, with respect to the disclosures about  
23 Provident in there, I reviewed the disclosures  
24 about Provident in there, but I did not review  
25 or author or take any responsibility for the



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1 accuracy of -- for the OHSL provisions in there  
2 on the Comparison of Stockholder Rights.

3 Q. Where did you get that information  
4 from?

5 MR. FISCHER: Objection. What  
6 information? He described a whole lot of  
7 information.

8 Q. The information that you just  
9 referenced about OHSL.

10 A. From OHSL's publicly available  
11 documents, the code of regulations and its  
12 articles of incorporation.

13 Q. Okay. And in preparing these  
14 drafts, did you do that on a computer system at  
15 KMK?

16 A. The initial words that I used to  
17 summarize the, these provisions, I did. I'm  
18 certain that I used our computer system, yes.

19 Q. Okay. And when you were done with  
20 your draft, to whom did you give it or send it?

21 MR. FISCHER: Objection.

22 A. I'm -- my initial draft?

23 Q. Yes.

24 A. Mark Weiss or, or Provident. I  
25 can say one of the two, I can't say which one

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1 question.

2 MS. ROWE: To the extent that your  
3 question, Mr. Brautigam, elicits information  
4 from Mr. Reuter about a discussion between he  
5 and Mr. Weiss relating to legal advice that KMK  
6 was giving to the Provident Bank, Provident  
7 asserts the privilege.

8 MR. BRAUTIGAM: Well, we believe  
9 that that's not an appropriate assertion of the  
10 privilege by both KMK representing KMK and the  
11 witness, and by KMK representing Provident, Oak  
12 Hills, the directors, KMK. And we'll deal with  
13 that at the appropriate time in the appropriate  
14 forum.

15 MS. ROWE: Well, just so I  
16 understand, is it your position that  
17 discussions between lawyers about legal advice  
18 given to their clients is not protected by the  
19 attorney-client privilege?

20 MR. BRAUTIGAM: You'll see our  
21 papers when we file them.

22 BY MR. BRAUTIGAM:

23 Q. Okay. Let's turn to page 48 of  
24 the document. Do you see where it says the  
25 number of directors?

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1 specifically.

2 Q. Okay. And did you talk to Mr.  
3 Weiss about your initial draft after you sent  
4 it to him?

5 MR. FISCHER: To the extent you  
6 can answer who you talked with --

7 A. Yes.

8 MR. FISCHER: -- but you can't  
9 discuss what was discussed.

10 A. I, I discussed -- yes, I talked  
11 with Mark about this. I should --

12 MR. FISCHER: Don't discuss what  
13 you talked to him about.

14 A. I won't. I should also add that  
15 this was a piece of what you know is a document  
16 that's a collaborative effort, that was a piece  
17 of a document that was reviewed and changed in  
18 many, many ways and revised by OHSL, its  
19 counsel, and Provident.

20 Q. Okay. When you talked to Mr.  
21 Weiss about your draft of the sections that  
22 you've just referenced, what did you say and  
23 what did he say?

24 MR. FISCHER: Don't -- instruct  
25 you not to -- instruct you not to answer that

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1 A. You're talking about this topic  
2 line right here?

3 Q. Yes.

4 A. Yes, I do.

5 Q. And the first two sentences deal  
6 with Provident, correct?

7 A. That's correct.

8 Q. And you obtained that information  
9 from Provident's publicly available  
10 information, correct?

11 A. That's correct.

12 Q. And what, if anything, did you do  
13 to assure yourself that that was accurate as of  
14 August 17th, 1999?

15 MR. FISCHER: Objection.

16 A. We sent this document to the  
17 parties to review and confirm its accuracy  
18 I -- with respect to that sentence on Provident  
19 and the code, we -- like I said, I reviewed the  
20 -- reviewed Provident's code and sent the --  
21 well, first of all, I'm not even sure that I --  
22 your question assumes that I wrote every single  
23 word here. That's not true. I mean, I can't  
24 say whether I did or didn't.

25 Q. Did someone else possibly write



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1 words on this page?

2 MR. FISCHER: Well -- he already  
3 testified -- go ahead.

4 A. This document was a collaborative  
5 effort that we got comments from OHSL, its  
6 counsel and Provident on throughout the  
7 process. And I can't tell you that -- I don't  
8 remember what I initially drafted in -- with  
9 respect to this draft. I don't recall  
10 specifically what I, you know, which specific  
11 words I initially drafted.

12 Q. Now, when you got these comments  
13 back, how did the process of making a change  
14 take place?

15 A. Parties provided changes to one  
16 another and the -- and discussed the changes.  
17 And if the parties agreed that -- well, changes  
18 were, you know, discussed and made or not made,  
19 given, you know, the circumstances in the  
20 discussions.

21 Q. How did the changes physically get  
22 made in the word processing system?

23 MR. FISCHER: Objection.

24 A. On which document?

25 Q. On this document.

1 next two sentences. It says, OHSL's  
2 certificate of incorporation provides that the  
3 number of directors will be set from time to  
4 time by a Board resolution. Do you see that?

5 A. Yes, I do.

6 Q. And then it goes on to say, The  
7 OHSL Board of Directors has set the current  
8 number of directors at eight. Do you see that?

9 A. Yes, I do.

10 Q. Okay. Was that true as of August  
11 17th, 1999?

12 A. I don't know.

13 Q. Okay. Did you ever learn that  
14 that was not correct?

15 A. I don't -- I don't recall. I  
16 don't, I -- I had no reason to know that this  
17 was not accurate.

18 Q. Do you remember at all in the  
19 summer of 1999, whether the number of OHSL  
20 directors was ever an issue?

21 A. I don't recall that being an  
22 issue.

23 Q. Okay. Where did you get this  
24 information?

25 MR. FISCHER: Objection.

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1 A. Well, with respect to instructions  
2 -- or comments we received from OHSL and  
3 Provident, our -- you know, what -- one of our  
4 word processing operators or secretary or an  
5 assistant, you know, made the change.

6 Q. On KMK's word processing system,  
7 correct?

8 A. With respect to -- with respect to  
9 this particular document? I'm -- I'm not a --  
10 I'm not a hundred percent certain that this  
11 is -- yes, that's right.

12 Q. Okay. And you supervised and  
13 oversaw any changes that were made by  
14 administrative personnel, correct?

15 A. That's not supervised and oversaw  
16 it. I -- I helped facilitate some of the  
17 changes that were made to this.

18 Q. Okay. And when you say you helped  
19 facilitate, please describe in as much detail  
20 as possible exactly what it is you did.

21 MR. FISCHER: Objection.

22 A. I, I don't recall. This was four  
23 years ago. I don't recall all the -- I don't  
24 recall specifically.

25 Q. Okay. Let's take a look at the

1 MS. ROWE: Objection. Asked and  
2 answered.

3 A. Which information?

4 Q. The OHSL information on the number  
5 of directors.

6 A. Well, as I've already said, I'm  
7 not certain that I actually penned or drafted  
8 that sentence.

9 Q. Okay. Where could it possibly  
10 have come from?

11 MR. FISCHER: Objection.

12 A. Communications -- possibly, so  
13 you're asking me to speculate as to where it  
14 could have come from?

15 Q. No, I'm asking for the  
16 possibilities. I'm not asking you to  
17 speculate.

18 MR. FISCHER: Objection.

19 Possibilities are speculation.

20 A. Well, the possibilities include  
21 instructions from OHSL, instructions from  
22 Dinsmore & Shohl.

23 Q. Okay. And that's my point. You  
24 may have received instructions from them, but  
25 you oversaw any changes that were made because

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1 this was your document on your computer system,  
2 correct?

3 MS. ROWE: Objection.

4 MR. FISCHER: Objection to the  
5 phrase "your document."

6 A. Again, this particular document  
7 may have been on our system. I would assume  
8 that Dinsmore would have also had this version  
9 or other similar versions on its system as  
10 well. So -- or OHSL or Provident, for that  
11 matter. I mean --

12 Q. How was it determined which  
13 version was final?

14 MR. FISCHER: Objection to the  
15 term "final."

16 A. Yes, which -- which version are  
17 you talking about being final?

18 Q. The one that was sent to the  
19 shareholders.

20 A. How was that determined?

21 Q. Yes.

22 A. Through this collaborative  
23 process, which we previously discussed. And  
24 through the input in -- of all the different  
25 parties, including OHSL and its counsel and

1 A. I don't recall. I don't recall.

2 Q. Okay. Let's talk about the  
3 service list document. What duties and  
4 responsibilities, if any, did Mr. Chris Carey  
5 have with respect to the process of drafting  
6 and reviewing Plaintiff's Exhibit 42?

7 MR. FISCHER: Do not disclose any  
8 communications with Mr. Carey. Otherwise, you  
9 can answer the question.

10 A. I don't know.

11 Q. Okay. What duties and  
12 responsibilities did Mark Magee have with  
13 respect to drafting and reviewing of  
14 Plaintiff's Exhibit 42?

15 MR. FISCHER: Same instruction.

16 A. I -- I don't recall, nor do I  
17 think I know. No, I don't know.

18 Q. Okay. What duties and  
19 responsibilities, if any, did John Farrenkopf  
20 have with respect to Plaintiff's Exhibit 42?

21 MR. FISCHER: Same instruction.

22 A. I don't know.

23 Q. Okay. What duties and  
24 responsibility, if any, did Richard Hanebutt  
25 have with respect to Plaintiff's Exhibit 42?

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1 Provident and us, there was a collective -- a  
2 collective decision was made.

3 Q. Was there someone who was in  
4 overall charge of the finalization of the proxy  
5 materials and the registration statement?

6 MR. FISCHER: Objection.

7 MS. ROWE: Objection. Asked and  
8 answered.

9 A. I can repeat my prior answer in  
10 response to your question. This was a  
11 collaborative effort that was only finalized  
12 until all of the parties said so.

13 Q. So no one individual person was in  
14 charge, is that correct?

15 MS. ROWE: Objection. Asked and  
16 answered.

17 MR. FISCHER: Objection.

18 A. Again, this was a collaborative  
19 effort. There was not one particular person  
20 who was making decisions in a vacuum.

21 Q. Who, if anyone, gave the final  
22 authorization for all of the material included  
23 in Defendant's Exhibit 1 to go to the printer  
24 and be disseminated to the OHSL shareholders?

25 MR. FISCHER: Objection.

1 MR. FISCHER: Same instruction.

2 A. I don't recall.

3 Q. Okay. What duties and  
4 responsibilities did Robert Litzinger have with  
5 respect to Plaintiff's Exhibit 42?

6 MR. FISCHER: Same instruction.

7 A. I don't recall.

8 Q. What duties and responsibilities  
9 did Tony Stollings have with respect to  
10 Plaintiff's Exhibit 42?

11 MR. FISCHER: Same instruction.

12 A. I don't recall.

13 Q. Okay. What duties and  
14 responsibilities, if any, did Mr. Kenneth  
15 Hanauer have with respect to Plaintiff's  
16 Exhibit 42?

17 MR. BUCKLEY: Objection.

18 A. I -- I don't recall.

19 Q. What duties and responsibilities  
20 did Charlie Crowley have with respect to  
21 Plaintiff's Exhibit 42?

22 A. I don't recall.

23 Q. What duties and responsibilities  
24 did Jeff Moritz have with respect to  
25 Plaintiff's Exhibit 42?

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1 A. I don't recall.

2 Q. What duties and responsibilities  
3 did Cliff Roe have with respect to Plaintiff's  
4 Exhibit 42?

5 MR. BUCKLEY: Objection.

6 A. I don't recall specifically.

7 Q. What duties and responsibilities  
8 did Charlie Hertlein have with respect to  
9 Plaintiff's Exhibit 42?

10 MR. BUCKLEY: Objection.

11 A. In general, OHSL and its counsel  
12 was responsible as the author of provisions in  
13 this document relating to OHSL. Other than  
14 that, I can't be more specific.

15 Q. When you say "responsible" in your  
16 previous answer, do you mean responsible in a  
17 legal sense to the shareholders or responsible  
18 in terms of the commitments of drafting and  
19 getting the document out?

20 A. Both.

21 MS. ROWE: Objection.

22 MR. FISCHER: Objection.

23 Q. Okay. What, if any, duties and  
24 responsibilities did Gary Kreider have with  
25 respect to Plaintiff's Exhibit 42?

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1 question, that's fine. He's on the service  
2 list and I was going in order. What duties and  
3 responsibilities did John Winstead have with  
4 respect to this Plaintiff's Exhibit 42?

5 MR. FISCHER: Same instruction.

6 A. I don't recall.

7 Q. Okay. Were there any other  
8 attorneys other than the ones I've mentioned at  
9 KMK who worked on the OHSL-Provident merger?

10 A. Not that I recall.

11 Q. Did you ever have any  
12 conversations with anyone on this service  
13 letter?

14 A. Yes.

15 Q. Okay. I believe you referenced a  
16 conversation with Tony Stollings earlier.  
17 Anyone else?

18 MR. FISCHER: Again, don't  
19 reveal -- you can reveal who you talked to, but  
20 not the content of communications with clients  
21 or the other lawyers in the office when you're  
22 giving advice to Provident. Otherwise, you can  
23 answer.

24 A. First of all about that  
25 communication with Tony Stollings, I may or may

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1 MR. FISCHER: Do not disclose  
2 discussions with other lawyers at KMK for the  
3 rendition of legal services for Provident.

4 A. I don't recall.

5 Q. What duties and responsibilities  
6 did David Rosenberg have with respect to  
7 Plaintiff's Exhibit 42?

8 MR. FISCHER: Same instruction.

9 A. I don't recall.

10 Q. What duties and responsibilities  
11 did Tim Matthews have with respect to  
12 Plaintiff's Exhibit 42?

13 MR. FISCHER: Same instruction.

14 A. I don't recall.

15 Q. What duties and responsibilities  
16 did Mark Weiss have with respect to Plaintiff's  
17 Exhibit 42?

18 MR. FISCHER: Same instruction.

19 A. Has this already been -- I'm  
20 trying to recall my -- I'm trying to understand  
21 how this question might be different from a  
22 prior question you asked about what Mark Weiss'  
23 responsibilities were with respect to this  
24 document.

25 Q. Well, if you answered the

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1 not have discussed with him, I don't recall.  
2 This was four years ago.

3 Q. Right. I think that was clear  
4 from your previous answer.

5 A. Right. I may or may not have, I  
6 don't recall. I may or may not have had  
7 discussions with Mark Magee, I don't recall. I  
8 may have had one discussion with Cliff Roe. I  
9 had discussions with Mark Weiss, I don't -- I  
10 don't recall any other discussions.

11 Q. Okay. When you had your  
12 discussion with Cliff Roe, what did you say and  
13 what did he say?

14 A. I don't recall.

15 Q. What was the topic of the  
16 conversation?

17 A. It had to do -- it was a brief  
18 conversation about a -- I don't recall. It was  
19 so -- it was a brief conversation at the very  
20 beginning of the preparation of the document  
21 that I -- I can't say with certainty what it  
22 was about, but it was not about anything -- I  
23 don't recall anything substantive or, or  
24 meaningful discussed.

25 Q. Okay. Now, this August 17th, 1999

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1 cover letter requests that people contact  
 2 either you or Mark Weiss with questions,  
 3 comments; is that right?  
 4 A. That's what the letter says, yes.  
 5 Q. And it's your testimony that to  
 6 the best of your recollection as you sit here  
 7 today, you may have spoken with Tony Stollings,  
 8 you did speak with Cliff Roe, you did speak  
 9 with Mark Weiss, and you've told me everything  
 10 you can about those conversations as limited by  
 11 your counsel; is that right?  
 12 MR. FISCHER: Objection to the  
 13 form, multiple questions, but if you can  
 14 answer, go ahead.  
 15 A. Your question is, I have told you  
 16 everything I can about my conversations with  
 17 those individuals?  
 18 Q. Right. As limited by your  
 19 counsel.  
 20 A. Well, I don't -- I don't recall  
 21 any -- I don't recall any specifics. I don't  
 22 recall any specifics that I could share with  
 23 you.  
 24 Q. Did you take notes of any of these  
 25 conversations?

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1 form whatsoever?  
 2 A. I -- I'm certain that I did.  
 3 Q. Okay. In what form did you take  
 4 notes?  
 5 A. I -- I don't recall. I mean, when  
 6 you said with a pen and a paper, that would be  
 7 the only method with which I would have taken  
 8 the notes, but I -- whether or not they made it  
 9 into a file is not something that I recall  
 10 doing.  
 11 I mean, I -- it was four years  
 12 ago, I can't -- I'm certain -- I mean, I take  
 13 notes in every transaction. I just can't -- I  
 14 can't -- I don't recall putting them in a  
 15 specific file and I -- I just don't recall  
 16 specifics about it.  
 17 MR. FISCHER: Just a second. I  
 18 notice you looked at your watch, Mr. Brautigam.  
 19 I don't need to leave till 12:30 today instead  
 20 of 11:30, so we have time.  
 21 Q. Where were these notes the last  
 22 time you saw them?  
 23 MS. ROWE: Objection.  
 24 MR. FISCHER: Objection.  
 25 MS. ROWE: He testified he doesn't

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1 A. I don't recall. I -- I don't  
 2 recall.  
 3 Q. Okay. Did you take notes at any  
 4 time during the OHSL-Provident merger?  
 5 A. When you say notes, what does that  
 6 mean?  
 7 Q. It means, among other things,  
 8 having a pen, writing down words, numbers on a  
 9 piece of paper, and putting it in a file called  
 10 notes, or some equivalent.  
 11 MR. FISCHER: Objection to the  
 12 form.  
 13 A. I -- I don't recall.  
 14 Q. Okay.  
 15 A. I don't recall taking notes that  
 16 way, no.  
 17 Q. Okay. Did you take notes on a  
 18 computer?  
 19 A. No, I didn't. I didn't. I don't  
 20 recall taking notes on a computer.  
 21 Q. Okay. Did you take notes with a  
 22 dictation machine?  
 23 A. No. I don't recall taking notes  
 24 on a dictation machine.  
 25 Q. Okay. Did you take notes in any

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1 recall specifics.  
 2 A. I haven't seen the notes. I don't  
 3 recall seeing the notes in four years about. I  
 4 couldn't tell you if they even still exist  
 5 anymore. In transactions like these occur and  
 6 close, I -- I don't -- I mean, I can't tell  
 7 you -- I can't tell you where they are or when  
 8 the last time I saw them was.  
 9 Q. Okay. Is there a document  
 10 retention policy at KMK?  
 11 A. I don't know. I'm not familiar  
 12 with it if there is one.  
 13 Q. Okay. Were you ever asked to  
 14 produce documents or preserve documents with  
 15 respect to any litigation arising out of the  
 16 OHSL-Provident merger?  
 17 MR. FISCHER: Don't disclose  
 18 communications between you and me.  
 19 A. No, not that I recall. I -- no.  
 20 Q. When did you learn from the first  
 21 time that there had been any litigation with  
 22 respect to the OHSL-Provident merger?  
 23 A. My counsel --  
 24 MR. FISCHER: Don't tell him what  
 25 you disclosed. He asked whenever.

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1 A. Whenever my counsel approached me  
2 and told me about it. The date on which --

3 MR. FISCHER: Don't tell him what  
4 was discussed.

5 A. I don't recall when. Your  
6 question is when?

7 Q. Yes.

8 A. I don't know.

9 Q. Was it in July of 2003?

10 A. No.

11 Q. Okay. When did you learn that KMK  
12 had been sued as a defendant in litigation  
13 related to the OHSL-Provident merger?

14 MS. ROWE: Objection.

15 MR. FISCHER: Again, he's asking  
16 when, if ever.

17 A. I don't know. I don't know.

18 Q. Did you find it unusual that you  
19 had not been asked to preserve your notes and  
20 records of the OHSL-Provident merger?

21 MR. FISCHER: Objection. Assumes  
22 facts not in evidence.

23 A. I don't -- I don't know. I don't  
24 know.

25 Q. This has been previously marked as

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1 MR. FISCHER: Objection,  
2 hypothetical.

3 A. I don't know. I mean, I may have,  
4 I may not have. I don't know.

5 Q. Okay. Was there an invariable  
6 process with respect to documents that were  
7 hand delivered to Mr. Weiss that presumably  
8 would then go to you and other members of the  
9 KMK team?

10 MS. ROWE: Object to form.

11 MR. FISCHER: I want to hear the  
12 question again.

13 (Record read by Reporter.)

14 MR. FISCHER: Note my objection.

15 A. I don't understand what you mean  
16 by "invariable."

17 Q. Okay. When this document was hand  
18 delivered to Mark Weiss, did he somehow get you  
19 this document?

20 MR. FISCHER: Objection.

21 A. I've already stated that I don't  
22 recall this. I'm not denying that I saw it, I  
23 just don't -- don't recall it.

24 Q. Okay. What's the purpose of this  
25 document?

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1 Plaintiff's Exhibit 16. I'm not sure that I  
2 have -- here. Mr. Reuter, I've handed you what  
3 has been previously marked as Plaintiff's  
4 Deposition Exhibit 16. And I ask you to take a  
5 look at it. Have you seen that document  
6 before?

7 A. I, I --

8 MR. FISCHER: Don't speculate.

9 A. I don't recall. I don't recall.

10 I'm not denying that I've seen it, but I -- I  
11 don't recall.

12 Q. Okay. Well, we'll get into it in  
13 more detail and see if that refreshes your  
14 recollection.

15 Okay. What is Plaintiff's Exhibit  
16 16?

17 A. Appears to be a letter from Mr.  
18 Hertlein to Mark Weiss that attaches  
19 handwritten comments on the S-4 purportedly  
20 from Pat Condren and Ken Hanauer.

21 Q. And in the normal course of  
22 business, with respect to the Provident merger  
23 at or about this time, meaning August 17th to  
24 August 19th of 1999, would you have seen this  
25 in the ordinary course of business?

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1 MR. FISCHER: Objection. It's  
2 somebody else's document and he doesn't recall  
3 if he saw it or not.

4 A. I don't know.

5 Q. What do you think the purpose is  
6 of sending this document to KMK?

7 MR. FISCHER: Objection to form.

8 MR. BUCKLEY: Objection.

9 A. I -- what do I think the purpose  
10 is?

11 Q. Yes.

12 MS. ROWE: Objection.

13 A. So you're asking me to --

14 MR. FISCHER: Object to the form.  
15 calls for him to speculate. Go ahead.

16 A. Okay. It is a -- I mean, I'm  
17 presuming that it -- you know, the purpose was  
18 for it to be a vehicle or mechanism to transmit  
19 comments on the document from OHSL to Mark  
20 Weiss, so the changes would be made in the S-4.

21 Q. And the purpose of making those  
22 changes was to make the S-4 accurate, truthful  
23 and complete, correct?

24 MR. FISCHER: Objection to the  
25 form --



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1 MS. ROWE: Objection to the form.  
 2 MR. FISCHER: -- of the question.  
 3 A. I can't tell you what OHSL's --  
 4 whether or not they intended to provide  
 5 accurate or complete and correct disclosure. I  
 6 hope they did, but I can't tell you what their  
 7 specific purpose was with respect to those  
 8 objectives.  
 9 Q. Do you have any reason to believe  
 10 that OHSL did not want to make the S-4  
 11 accurate, truthful and complete?  
 12 A. I don't know. I don't have a  
 13 reason.  
 14 Q. Do you have any reason to believe  
 15 that Ken Hanauer did not fully cooperate in the  
 16 merger process?  
 17 A. I don't know.  
 18 Q. Do you have any reason to believe  
 19 that Ken Hanauer was against the merger  
 20 transaction?  
 21 A. Again, I don't know.  
 22 Q. Okay. Let's take a look at this  
 23 document. If I could direct your attention to  
 24 -- let's look at page 53 of the document.  
 25 MR. FISCHER: Is there a page 54?

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1 Q. Apparently not. Look at the Bates  
 2 numbers  
 3 MR. FISCHER: Okay. Do you see  
 4 that?  
 5 A. Page 53, yes.  
 6 Q. Right, okay. What's the purpose  
 7 of listing a table of security ownership,  
 8 certain beneficial owners and management in an  
 9 S-4?  
 10 MS. ROWE: Objection.  
 11 A. Complying with the disclosure  
 12 regulations.  
 13 Q. And what are those disclosure  
 14 regulations, as you understand it?  
 15 MR. FISCHER: Objection.  
 16 A. I'd have to review regulation SK  
 17 to tell you specifically what the ownership  
 18 disclosure regulations are, but -- yes, I'd  
 19 have to review those specifically to go through  
 20 those regulations.  
 21 Q. You can tell me just generally.  
 22 MS. ROWE: Objection.  
 23 MR. FISCHER: Objection to the  
 24 form.  
 25 A. What the purpose is of the

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1 disclosure regulations relating to ownership?  
 2 Q. Yes.  
 3 A. To disclose the beneficial  
 4 ownership of certain OHSL executive officers  
 5 and directors.  
 6 Q. And do you have any idea why  
 7 that's required?  
 8 A. By the securities laws?  
 9 Q. Yes.  
 10 MS. ROWE: Objection.  
 11 MR. FISCHER: Objection.  
 12 A. I don't know what the SEC had in  
 13 mind when they promulgated that rule  
 14 specifically.  
 15 Q. Okay. Look in the first line  
 16 under the caption, and it sets forth as of July  
 17 31st, 1999. Do you see that?  
 18 A. Yes.  
 19 Q. Okay. How was that date selected?  
 20 MR. FISCHER: Objection.  
 21 A. I don't know.  
 22 Q. Who's responsible for selecting  
 23 that date?  
 24 MS. ROWE: Objection.  
 25 MR. BUCKLEY: Objection.

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1 MR. FISCHER: Objection.  
 2 A. OHSL.  
 3 Q. Who at OHSL?  
 4 A. I don't know.  
 5 Q. Okay. Do you ever -- do you  
 6 remember ever seeing this page of the document  
 7 before?  
 8 A. This page with these handwritten  
 9 comments?  
 10 Q. Yes.  
 11 A. With these handwritten comments,  
 12 I -- I do not recall seeing this page, no.  
 13 Q. Does this refresh your  
 14 recollection as to whether or not Thomas M.  
 15 Herron resigned as an OHSL director on  
 16 7/29/1999?  
 17 MR. FISCHER: Objection.  
 18 MS. ROWE: Objection.  
 19 A. No, it does not. I don't recall  
 20 that. I don't recall that resignation back,  
 21 back then. No, I don't recall that resignation  
 22 back then.  
 23 Q. Okay. Was the topic of Mr.  
 24 Herron's resignation ever discussed by KMK  
 25 attorneys or anyone working on the deal?

26 (Pages 98 to 101)



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1 MR. FISCHER: Objection.

2 MR. BUCKLEY: Objection.

3 MR. FISCHER: To the extent it

4 calls for discussions with clients or among the  
5 lawyers at KMK to give advice to the client,  
6 don't disclose. Other than that, you can  
7 disclose.

8 A. I don't recall discussions at KMK  
9 regarding the resignation.

10 Q. So this is the first you've  
11 learned of it, in fact, from these notes? Is  
12 that correct?

13 MR. FISCHER: Objection. Don't  
14 disclose anything we've discussed.

15 A. From this source?

16 Q. Yes.

17 A. The -- like I said, I may or may  
18 not have seen this. I don't -- I don't recall,  
19 but this -- but your bringing this document to  
20 my attention is the first time that I've become  
21 aware of this note indicating that --  
22 indicating the resignation.

23 Q. Okay. Aside from the note, do you  
24 recall any issue of Mr. Herron's resignation  
25 with respect to the OHSL-Provident merger?

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1 MR. FISCHER: Objection.

2 MR. BUCKLEY: Objection.

3 MS. ROWE: Objection.

4 A. I believe the shareholders have a  
5 right to have the company comply with  
6 disclosure requirements relating to who its  
7 directors are.

8 Q. I respectfully suggest that that's  
9 not responsive to my question. My question is  
10 this: Do you believe that the shareholders of  
11 a public company as a general matter should be  
12 able to tell who their directors are at any  
13 particular time?

14 MS. ROWE: Same objection. Asked  
15 and answered.

16 MR. FISCHER: Same objection.  
17 Asked and answered. Arguing with the witness,  
18 prior answer.

19 A. Can I repeat my prior answer?

20 Q. Well, I can repeat it, it's not  
21 responsive. If that's the best you can do,  
22 I'll move on.

23 A. You can continue to ask the  
24 question and argue with me if you want, but  
25 I'll repeat my answer.

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1 MR. FISCHER: Same instruction.

2 A. Recall at what time?

3 Q. In the summer of 1999 when you  
4 were working on the merger.

5 A. No.

6 MR. FISCHER: Same instruction.

7 A. No, I do not.

8 Q. Okay. That would include the fall  
9 of 1999, all the way up to the closing on  
10 December 3rd. Same answer?

11 MR. FISCHER: Same instruction.

12 A. I do not recall. I do not recall  
13 that -- I do not recall the resignation issue  
14 at that time.

15 Q. Okay. And aside from what you may  
16 have discussed with Mr. Fischer, you don't  
17 recall the resignation of Mr. Herron ever to  
18 have been an issue; is that fair?

19 MR. FISCHER: Same instruction.

20 A. To my recollection, yes, that's  
21 correct. That's correct.

22 Q. Okay. Do you believe that the  
23 shareholders of a public company have a right  
24 to know who their directors are at any given  
25 time, as a general proposition?

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1 Q. No, I'm not arguing with you.

2 MR. FISCHER: Yes, you are,  
3 because you don't like his answers.

4 Q. Do you believe that Mr. Herron's  
5 resignation is a material fact that should have  
6 been disclosed to the shareholders in the  
7 context of this transaction?

8 MR. FISCHER: Objection.

9 MS. ROWE: Objection.

10 MR. BUCKLEY: Objection.

11 MR. FISCHER: He never knew about  
12 it, he already testified. Hypothetical.

13 A. This should have been disclosed if  
14 it was required by the proxy rules -- by the  
15 securities disclosure rules relating to proxy  
16 materials/8-K. And if I recall the proxy  
17 disclosure rules for director resignations are  
18 comparable, if not exactly the same as the form  
19 8-K resignation requirements.

20 In other words, the proxy  
21 materials do not have to disclose the  
22 resignation unless there is a writing from the  
23 resigning director that sets forth the terms of  
24 the disagreement over which the director is  
25 resigning and the letter additionally

27 (Pages 102 to 105)